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LIABILITY OF A CHARITABLE INSTITUTION FOR THE NEGLIGENCE OF ITS SERVANTS.

The rules in regard to liability for negligence are pretty firmly established and, in the main, with but little diversity between the several states. Especially well established is the rule of *respondeat superior,* which requires the master to stand responsible for all damage resulting from the negligence of his servant, while acting in his capacity as such. There is, however, one notable exception to the settled applicability of this rule, namely, the responsibility of a charitable corporation for the negligence of its servants. Here there are various elements which have given rise to much discussion and make the question of the application of the rule an interesting one.

The latest case dealing with this question is *Taylor v. Protestant Hospital Association,* 96 N. E. (Ohio), 1089. The facts were that the defendant association received a woman at its hospital as a pay patient and agreed, for a valuable consideration, to furnish her with board, lodging, nursing, etc., and assist in and about an operation to be performed on her by a certain named surgeon. Through the negligence of one of the nurses a small gauze sponge was left in the body of the patient, and this caused her death.

Action was brought by the administrator to recover damages from the hospital association. The court decided in favor of the defendant, saying that a public hospital, organized as a charitable association and open to all persons, although conducted under private management, is not liable for injuries to a patient of the hospital resulting from the negligence of a nurse employed by it. The fact that this was a pay patient made no difference.

Much reliance was placed by the court upon the case of *McDonald v. Massachusetts General Hospital,* 120 Mass., 432, which is a leading case upon the subject. It was there said that a corporation is rendered none the less a public charity by the fact that its funds are supplemented by such amounts as it may receive from patients who are able to pay. All sums thus obtained are held upon the same trust as those which are the gifts of pure benevolence, and no contract can be inferred from the relation of the parties, except, perhaps, on the part of the corporation, that it shall use due and reasonable care in the selection of its agents. And in addition, quoting the words of the Court: "The liability of the defendant corporation can extend no further than this. If there has been no neglect on the part of those who administered the trust and control its management, and if due care has been used by them in the selection of their inferior agents, even if injury has occurred by the negligence of such agents, it cannot be made responsible. The funds intrusted to it are not to be diminished by such casualties if those immediately controlling them have done their true duty in reference to those who have sought to obtain the benefit of them."

In accordance with the doctrine thus stated is *Downes v. Harper Hospital,* 101 Mich., 555, holding that charitable bequests cannot be thwarted by negligence for which the donor is in no manner responsible, but the law jealously guards the trust fund, and does not permit it to be frittered away by the negligent acts of those employed in its execution. And holding also, that the fact that patients who are able to pay are required to do so, does not deprive the defendant of its eleemosynary character, nor permit a recovery for damages on account of the existence of contract relations.

Damages may be recovered from the wrongdoer but not from the trust fund, for if these funds were allowed to be thus diverted,

the usefulness, and even the existence, of charitable institutions would soon be terminated. *Williamson v. Louisville Industrial School of Reform,* 95 Ky., 251.

In Maryland a like rule was laid down upon English authority, the Court saying that in the absence of any decisions in that State they were constrained to adopt the exposition of principles given by certain eminent English judges there cited. *Perry v. House of Refuge,* 63 Md., 20.

A voluntary association for charitable purposes cannot appropriate its funds for any other purpose than the one intended by the articles of association or by-laws. *Penfield v. Skinner,* 11 Vt., 296.

The foregoing cases have all reached the same conclusion upon practically the same reasons, but there is another class of cases which base their decisions on another reason, that of public policy. Of these cases the leading one is *Hearns v. the Waterbury Hospital,* 66 Conn., 98. After an extensive review of the English and American authorities the Connecticut court decides that a charitable institution is not liable for the negligence of its servants, but distinguishes between such negligence and the corporate negligence of an eleemosynary institution for which the corporation is liable. To quote from the opinion: "On the whole, substantial justice is best served by making a master responsible for the injuries caused by his servant acting in his service, when set to work by him to prosecute his private ends, with the expectation of deriving from that work private benefit. This has at times proved a hard rule, but it rests upon a public policy too firmly settled to be questioned. But we think the law does not justify an extension of the rule of *respondeat superior,* making the owners of a public charity, involving no private profit, responsible not only for their own wrongful negligence, but also for the wrongful negligence of the servants they employ only for a public use and a public benefit. A charitable corporation like the defendant is not liable, on grounds of public policy, for injuries caused by the negligence of a servant whom it has selected with due care."

On the same grounds it has been held that a master who sends his servant to a hospital maintained by the master for charitable

purposes, is not responsible for injuries caused to the servant by negligence of hospital attendants, where the master has exercised ordinary care in selecting such attendants. *Union Pacific Railway Co. v. Artist,* 60 Fed., 365. To like effect are *Hall v. Smith,* 2 Bing., 156; and *Holliday v. St. Leonards,* 11 C. B., U. S., 192.

There remains one more case to be considered since it represents a class of cases based on still different reasoning from those heretofore mentioned. This is the case of *Powers v. Massachusetts Homeopathic Hospital,* 109 Fed., 294, where the Court says, "If, indeed, there can be shown an agreement by the plaintiffs to hold the defendant harmless for the acts of its servants, then it follows that this action cannot be maintained, and we agree with the learned judge of the court below that this agreement arises by necessary implication from the relation of the parties. That a man is sometimes deemed to assume a risk of negligence, so that he cannot sue for damages caused by the negligence, is familiar law. One who accepts the benefit either of a public or of a private charity enters into a relation which exempts his benefactor from liability for the negligence of his servants in administering the charity; at any rate if the benefactor has used due care in selecting those servants."

The great weight of authority then, as portrayed in the three cases chiefly discussed, holds that a charitable institution, such as a public hospital, is not liable for the negligence of its servants in any case, provided due care is exercised in their selection. Three main reasons are given for this exemption from liability. First, that the trust fund is not to be diverted from the purpose for which it was given, *McDonald v. Massachusetts General Hospital, supra;* second, that public policy makes such exemption desirable and even necessary, *Hearns v. the Waterbury Hospital, supra;* and third, that when a person accepts the benefit from one of these institutions, he impliedly agrees to take all risk of injury through the negligence of the servants, *Powers v. Massachusetts Homeopathic Hospital, supra.* Almost all the decisions are based upon one or more of these reasons, and the three cases cited fully discuss and express the doctrine of the United States and English courts upon this subject. Among the cases cited as holding a contrary view, *Glavin v. Rhode Island Hospital,* 12

R. I., 411, is one of the few which cannot be easily distinguished as containing other elements which affected the decision, and even in that case, there is some implication of corporate negligence on the part of the association in its selection of servants. And immediately after the decision in that case, the Rhode Island legislature expressed its disapproval and distrust of the doctrine by passing a statute relieving charitable corporations of such liability. So it is concluded that *Taylor v. Protestant Hospital Association, supra,* was decided according to the weight of authority and in harmony with common sense and popular ideas of justice.

EX-OFFICIO POWERS OF THE PRESIDENT OF A PRIVATE CORPORATION.

The authorities are not uniform as to the powers possessed by the president of a private corporation, merely by virtue of his office.

In the recent case of *Murchison Nat. Bank v. Dunn Oil Mills Co.,* 73 S. E., 93 (N. C.), (omitting facts not involved in the question under consideration), the plaintiff brought an action on a promissory note signed by the president of the defendant corporation. The contention of the defendant was that the president was not authorized to sign the note, and since no such authority existed by virtue of his office, the company was not bound by his act. The court held that the president was *ex vi termini* its general agent, and that all his acts are presumed to have been within his authority unless the contrary appears.

It is a well recognized and uncontradicted principle of the law of private corporations that a corporation has the implied power to borrow money for legitimate corporate purposes. This power may be exercised by the general manager of a corporation, when entrusted with the entire control of its business. *Matson v. Alley,* 141 Ill., 284.

Some of the courts, in sustaining the doctrine of the principal case, hold that the president of a corporation, since he is usually given the general control of the affairs of the company, is presumed to have authority to execute promissary notes in the name of the corporation. *Consolidated Perfume Co. v. Nat. Bank of Republic,* 86 Ill. App., 642. The burden is upon the corpora-